

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,
-against-

09 Cr. 1239 (PKC)

EMILIO FUSCO,

Defendant.

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ORDER

CASTEL, District Judge:

This Court previously considered Emilio Fusco's motion for a sentence reduction for extraordinary and compelling reasons. The Court appointed counsel to represent him and was presented with extensive information concerning his medical condition and his life since the date of sentence. After hearing argument, the Court denied the application of Fusco who has served approximately 48% of his sentence. (Minute Entry Nov. 19, 2020; Order of Dec. 3, 2020; Doc 400.) Fusco filed a motion to reconsider (Doc 403), as well as a notice of appeal (Doc 401.) The mandate has now issued from the Second Circuit on Fusco's withdrawn appeal. (Apr. 1, 2021; Doc 402.)

The Court is mindful that under section 3582(c)(1), district courts are permitted "to consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before [the court] in motions for compassionate release." United States v. Brooker, 976 F.3d 228, 237 (2d Cir. 2020) ("Neither Application Note 1(D), nor anything else in the now-outdated version of Guideline § 1B1.13, limits the district court's discretion.").

Fusco points out that he was diagnosed with Covid-19 on December 25, 2020. ! The CDC has stated that "[c]ases of reinfection with COVID-19 have been reported, but remain

rare,” and advises persons who have been infected to maintain protective measures.¹ The CDC also has stated that the “[p]resence of antibodies following natural infection may produce some level of protection from re-infection. . . .”² Fusco resides at Federal Medical Center Devens where he has received and can expect in the future to receive more than adequate medical attention. While this medical facility has had inmates 379 inmates who have recovered from the virus and 10 who died, presently there are no patients or staff who have tested positive for the virus.³

The Court adheres to its prior ruling denying Fusco’s application for a sentence reduction.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
April 7, 2021

¹ <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>

² https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html#anchor_1590264247573

³ <https://www.bop.gov/coronavirus/>